

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 785 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 - No

KASHIBEN WD/O. MAHIJIBHAI NATHABHAI PATEL THROUGH P.O.A.

Versus

COMPETENT AUTHORITY & ADDL. COLLECTOR (U.L.C.)

Appearance:

MR MC BHATT for Petitioners

MR DP JOSHI, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/08/98

ORAL JUDGEMENT

Rule. In the facts and circumstances of the case, the matter is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the judgment and order dated 1.12.1997 passed by the Urban Land Tribunal in Appeal No. (Baroda) 63 of 1996 confirming the order dated 18.10.1996 passed by the Competent Authority & Additional Collector, ULC, Vadodara cancelling the exemption granted by the Competent Authority under Sec. 21 of the Urban Land

(Ceiling & Regulation) Act, 1976 (hereinafter referred to as "the Act").

3. By order dated 19.6.1997 (Annexure "A"), the Competent Authority had sanctioned the petitioners' application under Section 21(1) of the Act for construction of dwelling units for weaker sections of the society. The sanction was granted subject to various terms and conditions. Condition No. 1(a) stipulated that the construction of all the dwelling units as per the scheme shall be commenced within one year and completed within five years and that if there is any delay without explanation indicating circumstances beyond the control of the landholder, the scheme would be liable to be cancelled. Condition No. 4 required the land holder to publish an advertisement in daily newspaper inviting applications from persons eligible as per the scheme. Condition No. 5(c)/1/1 and (3) prescribed the income eligibility of persons who can be allotted the dwelling units. The income limit was fixed upto Rs. 12,000/-, Rs. 25,000/- or Rs. 30,000/depending on the area of the constructed property. There was also condition no. 9 requiring the landholder to furnish periodical progress reports.

4. On 31.7.1998, the Competent Authority issued show cause notice (Annexure "E") calling upon the petitioners to show cause why the scheme should not be cancelled in view of the following breaches :-

- (i) Construction of the dwelling units/shops was not completed within the stipulated period of five years.
- (ii) Public notice inviting applications from the weaker sections of the society was not published in daily newspaper.
- (iii) The periodical progress reports were not furnished to the Competent Authority as per condition No. 9.
- (iv) On completion of the construction plinth check certificate was required to be produced within a period of five years i.e. by 18.6.1996 which was not done.
- (v) There was violation of condition No. 21 of the scheme requiring the petitioners to produce the list of names, addresses of the allottees and the certificates in respect of their income.

However, even till completion of the five years period, no such details are produced.

5. After hearing the petitioners, the Competent Authority came to the conclusion that the petitioners had given a public notice in the newspaper dated 23.8.1994 and, therefor, that objection did not survive. However, the Competent Authority held that there was no satisfactory explanation for breaches of the other four conditions and, therefore, the Competent Authority passed the impugned order dated 18.10.1996 (Annexure "F") cancelling the permission granted under Section 21 of the Act and declaring 11,409 sq.mtrs. of land as excess vacant land. The petitioners carried the matter in appeal. The Tribunal dismissed the appeal on 1.12.1997 by judgement at Annexure "G" to the petition.

The present petition challenges the aforesaid orders.

6. Mr Bhatt, learned counsel for the petitioners has submitted at the hearing of the petition that the scheme sanctioned by the Competent Authority on 19.6.1991 was required to be modified on 24.4.1992. Thereafter, the Deputy Collector granted N.A. permission on 3.2.1994 and therefore, there was reasonable explanation for the petitioners' inability to complete the construction within the stipulated period of five years. He has further submitted that in any view of the matter, the petitioners had obtained plinth check certificate from the Municipal Corporation on 22.12.1995 and, thereafter, the petitioners had continued construction and in fact even as per the finding given by the Competent Authority on 4.10.1995, 12 dwelling units were constructed upto the slab level, 36 dwelling units were constructed upto slab level and the finishing was also done and the remaining 40 dwelling units and four shops were completely constructed. Hence, the delay, if any, in completion of construction was only marginal and technical.

7. As regards the violation of condition no. 21 by not furnishing the list of the names and addresses of the members of the scheme and their income details, the learned counsel states that although the details were not produced by the petitioners earlier, the petitioners are now prepared to produce those details before the Competent Authority.

8. On the other hand, Mr Joshi, learned AGP appearing for the respondents has submitted that there is no evidence to show that the construction of all the

dwelling units/shops as per the scheme was completed before June, 1996 when the five year period expired. It is further stated that the certificate of the specified authority referred to in para 8(c) of the petition was not dated 28.7.1996 but it was dated 28.7.1997 and, therefore, the construction of all the 88 dwelling units and four shops as per revised scheme was completed only after June, 1996 and, therefore, there was noncompliance with condition No. 1 of the scheme. It is further submitted that since the periodical progress reports were also not given before October, 1995, and the list of the names and addresses of the members and their income certificates were also not produced, the authority was justified in passing the impugned orders.

9. Having heard the learned counsel for the parties, it appears that the petitioners did not fully comply within the condition of completion of construction of the 88 dwelling units and 4 shops within five year period which expired in June, 1996. However, in view of the fact that the construction is already put up and in view of the fact that such condition has been held to be directory by this Court in the judgement in the case of Shamjibhai Bhanjibhai Patel Vs. Competent Authority ULC, Surat, 36 (1) GLR 742, it would be just and proper to set aside the order of the Competent Authority as confirmed by the Tribunal in so far as the breach of condition Nos. 1(3) and 4 are concerned, by requiring the petitioners to pay the Competent Authority penalty at the rate of Rs. 1000/- (Rupees One thousand only) for each of the 88 dwelling units and Rs. 2,000/- (Rupees Two thousand only) for each of the shops.

10. That leaves only allegation regarding breach of condition No. 21 for not supplying the names and addresses and income particulars of the members of the scheme. It cannot be said that the said condition was directory. In fact, the said condition not only goes to the root of the Scheme under Section 21 but is the very heart of the Act and noncompliance with such a condition cannot be waived. However, in view of the assurance being held out on behalf of the petitioners that within six weeks from today, the petitioners will supply all such details so as to comply with condition No. 21, it appears that the interests of justice would be served if the impugned order of the Competent Authority as confirmed by the Tribunal is set aside with a direction to the petitioners to pay the aforesaid amount of penalty and also to supply all the details required by condition No. 21 of the scheme within six weeks from today, with liberty to the respondents to initiate appropriate

proceedings if the list which shall be supplied by the petitioners is not in conformity with the Scheme.

11. The petition is, therefore, allowed and the impugned orders at Annexures "F" and "G" are quashed and set aside, subject to compliance with the aforesaid two directions within six weeks from today. If the conditions are not complied with within the aforesaid time limit, the petition shall stand dismissed and the orders at Annexures "F" and "G" shall revive.

12. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

(M.S. Shah, J.)